REMARKS/ARGUMENTS

Favorable reconsideration of this application as presently amended and in light of the following discussion is respectfully requested.

Claims 1-3 are presently active in this application, Claims 1 and 3 having been amended by the present amendment, and Claims 4-25 having been previously withdrawn from consideration as being directed to a non-elected invention.

In the outstanding Office Action, Claim 1 was rejected under 35 U.S.C. § 102(a) as anticipated by Yamada et al. (U.S. Patent Application Publication No. U.S. 2003/0151112 A1, herein "Yamada"); Claim 2 was rejected under 35 U.S.C. § 103(a) as unpatentable over Yamada in view of Sugawara et al. (U.S. Patent No. 6,750,486, herein "Sugawara"); and Claim 3 was indicated as allowable if rewritten in independent form.

Applicants thank the Examiner for the indication of allowable subject matter. In view of this indication, Claim 3 has been rewritten in independent form including all the features of its base claim. No new matter has been added. Accordingly, it is respectfully submitted that amended Claim 3 is in condition for allowance.

Regarding the rejection of Claim 1 under 35 U.S.C. § 102(a) as anticipated by Yamada, independent Claim 1 has been amended to recite that a first element isolation insulating film is formed on "a top main surface of" a first insulating film, and a first epitaxial layer is in "direct" contact with the first element isolation insulating film and a first insulating film. The claim amendments find support in Figure 1 and its corresponding description in the specification. No new matter has been added.

Briefly recapitulating, amended Claim 1 is directed to a semiconductor device that includes a substrate having first to fourth regions. A first insulating film is formed on the substrate in the first region, a first epitaxial layer is formed on the substrate in the second region, and a first semiconductor layer is formed on the first insulating film with a space

provided with respect to the first epitaxial layer. A first element isolation insulating film is formed in the space and has an upper surface set at substantially the same height as the upper surface of the first epitaxial layer and the upper surface of the first semiconductor layer. The first element isolation insulating film is formed on a top main surface of the first insulating film, and the first epitaxial layer is in direct contact with the first element isolation insulating film and the first insulating film.

In a non-limiting example, Figure 1 shows a semiconductor device having the substrate 11, the first insulating film 12, the first epitaxial layer 17, the first semiconductor layer 13, and the first element isolation insulating film 16.

Turning to the applied art, Yamada shows in Figure 1B a semiconductor device having a substrate 10 and a first element isolation insulating film STI formed on a side surface of a first insulating film 11 and not on a top main surface of the first insulating film 11 as required by amended Claim 1. In addition, a first epitaxial layer 13 of Yamada is not in direct contact with the first insulating film 11 as is also required by amended Claim 1.

Therefore, Yamada does not teach or suggest a first element isolation insulating film formed on a top main surface of a first insulating film and a first epitaxial layer in direct contact with the first insulating film.

Accordingly, it is respectfully submitted that independent Claim 1 and each of the claims depending therefrom patentably distinguish over Yamada.

Further, amended Claim 1 is discussed with regard to the newly filed references Leobandung et al. (U.S. Patent No. 6,429,488 B2, herein "Leobandung 1") and Leobandung et al. (U.S. Patent No. 6,214,694 B1, herein "Leobandung 2").

Leobandung 1 shows in Figures 2D-2E a first element isolation insulating film 28c and a second element isolation insulating film 28a formed simultaneously. However, both

element isolation insulating films 28a and 28c have a bottom surface flush with each other. Leobandung 2 is identical to Leobandung 1.

Independent Claim 1 has been amended to recite that a second element isolation insulating film has a bottom surface lower than the bottom surface of the first element isolation insulating film and the second element isolation insulating film is not in direct contact with the first epitaxial layer. Therefore, amended Claim 1 patentably distinguishes over Leobandung 1 because Figure 2E of Leobandung 1 shows that both layers 28a and 28c have bottom surfaces at the same level.

Accordingly, it is respectfully submitted that amended Claim 1 and each of the claims depending therefrom patentably distinguish over Leobandung 1 and Leobandung 2, either alone or in combination.

Regarding the rejection of Claim 2 under 35 U.S.C. § 103(a) as unpatentable over Yamada in view of Sugawara, Sugawara has been considered but does not overcome the deficiencies of Yamada discussed above. In addition, Claim 2 depends from independent Claim 1, which is believed to be allowable as noted above. Accordingly, it is respectfully submitted that dependent Claim 2 is also allowable.

Consequently, in light of the above discussion and in view of the present amendment, the present application is believed to be in condition for allowance and an early and favorable action to that effect is respectfully requested.

Respectfully submitted,

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